No. 16-466

IN THE
Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO, *et al.*,
Respondents.

On Writ of Certiorari to the
California Supreme Court

REPLY BRIEF FOR PETITIONER

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RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the opening brief for petitioner remains accurate.

TABLE OF CONTENTS

Page

RULE 29.6 DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

ARGUMENT 2

I. RESPONDENTS OFFER NO BASIS FOR REJECTING A CAUSAL TEST 2

A. The Court's Precedents Dictate A Causal Test 2

B. The Structure And Purposes Of The Specific-Jurisdiction Inquiry Require A Causal Test 8

II. RESPONDENTS' NON-CAUSAL TEST IS NOT SUPPORTED BY THIS COURT'S CASES OR COMMON SENSE 11

III. A CAUSAL TEST WOULD NOT UPEND SETTLED JUDICIAL PRACTICES 18

CONCLUSION 24

TABLE OF AUTHORITIES

Page

CASES:

Asahi Metal Indus. Co. v. *Superior Court*, 480 U.S. 102 (1987) 5, 16, 17

Balestrieri v. *Maliska*, 622 So.2d 561 (Fla. Dist. Ct. App. 1993) 21

Beard v. *Kindler*, 558 U.S. 53 (2009) 10

Burger King Corp. v. *Rudzewicz*, 471 U.S. 462 (1985) 10, 16

Burnham v. *Superior Court*, 495 U.S. 604 (1990) 8

Chick Kam Choo v. *Exxon Corp.*, 486 U.S. 140 (1988) 18

Coburn v. *SmithKline Beecham Corp.*, 174 F. Supp. 2d 1235 (D. Utah 2001) 24

Coleman v. *Thompson*, 501 U.S. 722 (1991) 10

Daimler AG v. *Bauman*, 134 S. Ct. 746 (2014) 3, 7, 8, 16, 18

Devlin v. *Scardelletti*, 536 U.S. 1 (2002) 22

Goodyear Dunlop Tires Operations, S.A. v. *Brown*, 564 U.S. 915 (2011) 3, 5, 13, 16

Hanson v. *Denckla*, 357 U.S. 235 (1958) 4, 18

Helicopteros Nacionales de Colombia v. *Hall*, 466 U.S. 408 (1984) 3, 4

TABLE OF AUTHORITIES—Continued

Page

Henderson v. *Henderson*,
818 A.2d 669 (R.I. 2003) (per curiam) 21

Hertz Corp. v. *Friend*,
559 U.S. 77 (2010) 14, 16

In re "Agent Orange" Prod. Liab. Litig.,
818 F.2d 145 (2d Cir. 1987) 21

In re Chinese-Manufactured Drywall Prods. Liab. Litig.,
742 F.3d 576 (5th Cir. 2014) 22

In re Estate of Zagaria,
997 N.E.2d 913 (Ill. App. Ct. 2013) 20

In re Plavix Mktg., Sales Practices & Prods. Liab. Litig.,
923 F. Supp. 2d 1376 (J.P.M.L. 2013) 23

International Shoe Co. v. *Washington*,
326 U.S. 310 (1945) ..... *passim*

Islamic Republic of Iran v. *Pahlavi*,
467 N.E.2d 245 (N.Y. 1984) 18

J. McIntyre Mach., Ltd. v. *Nicastro*,
564 U.S. 873 (2011) 9, 10, 12

Keeton v. *Hustler Magazine, Inc.*,
465 U.S. 770 (1984) 4, 5, 6, 19, 20

Kulko v. *Superior Court*,
436 U.S. 84 (1978) 4

Maracich v. *Spears*,
133 S. Ct. 2191 (2013) 4

Mellouli v. *Lynch*,
135 S. Ct. 1980 (2015) 4

TABLE OF AUTHORITIES—Continued

Page

Omni Capital Int'l, Ltd. v. *Rudolf Wolff & Co.*, 484 U.S. 97 (1987) 21

Parklane Hosiery Co. v. *Shore*, 439 U.S. 322 (1979) 23

Pennoyer v. *Neff*, 95 U.S. 714 (1877) 8

Perkins v. *Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) 4

Phillips Petroleum Co. v. *Shutts*, 472 U.S. 797 (1985) 7

Picot v. *Weston*, 780 F.3d 1206 (9th Cir. 2015) 5

Rush v. *Savchuk*, 444 U.S. 320 (1980) 4, 14, 20

Seiferth v. *Helicopteros Atuneros, Inc.*, 472 F.3d 266 (5th Cir. 2006) 5

Shaffer v. *Heitner*, 433 U.S. 186 (1977) 4, 5, 8, 20, 21

Shutts v. *Phillips Petroleum Co.*, 567 P.2d 1292 (Kan. 1977) 7

Sun Oil Co. v. *Wortman*, 486 U.S. 717 (1988) 9

Sunward Elecs., Inc. v. *McDonald*, 362 F.3d 17 (2d Cir. 2004) 5

Vieth v. *Jubelirer*, 541 U.S. 267 (2004) 17

Walden v. *Fiore*, 134 S. Ct. 1115 (2014) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page

World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) 9, 10, 13

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. V 21, 23

U.S. Const. amend. XIV 23

RULE:

Fed. R. Civ. P. 4(k)(1)(A) 23

OTHER AUTHORITIES:

Alison Kennamer, *Issues Raised by the Potential Application of Non-Mutual Offensive Collateral Estoppel in Texas Products Liability Cases*, 30 Tex. Tech L. Rev. 1127 (1999) 24

Restatement (Second) of Torts (1979) 19

Charles Alan Wright et al., *Federal Practice & Procedure* (3d & 4th eds. Apr. 2017 update) 4, 17, 23

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INTRODUCTION

Respondents do not defend the California Supreme Court's sliding-scale approach. Nor, for that matter, do they defend any other personal-jurisdiction test that any court has ever articulated.

Instead, respondents urge the Court to adopt an entirely novel personal-jurisdiction rule, one jerry-rigged to fit the facts of this case. Depending on which page of their brief one opens, respondents' test turns on which plaintiffs choose to file together, how many defendants they append to their complaint, the similarity of the defendants' conduct across States, or some subset of those factors. The exact details are unclear; but whatever their rule, respondents are

sure that the sky will fall several times over if the Court does not adopt it.

That argument is as implausible as it sounds. For decades, the large majority of circuits, covering 37 States, have held that plaintiffs may sue a non-resident defendant only where some conduct giving rise to their claims was performed or directed. That jurisdictional rule is fair, follows from this Court's precedents, and has not caused any of the dire consequences of which respondents warn. Respondents' rule, by contrast, lacks any footing in precedent and would inject uncertainty into what should be a predictable standard.

The Court does not need to upend the law or "overrule *International Shoe* and its progeny," Resp. Br. 36 n.7, to resolve this case. Plavix was not developed or manufactured in California; it was not marketed, distributed, or prescribed to respondents in the State; and respondents did not ingest the drug in California either. Respondents do not dispute that their particular claims lack any causal connection to anything that Bristol-Myers did in California. California is therefore not a proper forum to hear their causes of action. The California Supreme Court's judgment should be reversed.

ARGUMENT

I. RESPONDENTS OFFER NO BASIS FOR REJECTING A CAUSAL TEST

A. The Court's Precedents Dictate A Causal Test

1. In every case since *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), in which the Court has found specific jurisdiction, it has identified a

causal link between the defendant's forum contacts and the plaintiff's cause of action. Pet. Br. 17-19. And in every case since *International Shoe* in which the Court has found specific jurisdiction lacking, it has noted the absence of such a causal link. *Id.* at 19-20. The Court's recent pronouncements in *Goodyear* and *Daimler* are the culmination of these precedents: There, the Court held that if an "accident" occurred outside the forum, and the product that "caused the accident was manufactured and sold" outside the forum, the forum "lack[s] specific jurisdiction to adjudicate the controversy." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011); *see Daimler AG* v. *Bauman*, 134 S. Ct. 746, 751, 754 n.5 (2014) (similar). That straightforward principle decides this case. *Accord* U.S. Br. 11.

Respondents do not grapple with the facts or holdings of the vast majority of these cases. Nor do they explain how their freewheeling test squares with the clear rule this Court articulated in *Goodyear* and *Daimler*. Rather, respondents' main contention (at 18-19) is that because the Court has used the disjunctive phrase "arise out of *or* relate to," it *must* have intended to establish two categories of connections that could support specific jurisdiction. But when the Court first adopted that formulation, it "decline[d]" to decide "whether the terms 'arising out of' and 'related to' describe different connections." *Helicopteros Nacionales de Colombia* v. *Hall*, 466 U.S. 408, 415 n.10 (1984). Similar two-part formulations appear throughout the law, without anyone attributing a different meaning to each part: "arbitrary or capricious," for instance, or—to pick an example closer to home—"fair play and substantial

justice." *International Shoe*, 326 U.S. at 316; *see* Pet. Br. 22. "Arise out of or relate to" is best understood as just another example—especially given the notorious indeterminacy of the words "related to." *See Mellouli* v. *Lynch*, 135 S. Ct. 1980, 1990 (2015) (the words "relating to" are " 'broad' and 'indeterminate' "); *Maracich* v. *Spears*, 133 S. Ct. 2191, 2200 (2013) (" 'everything is related to everything else' ").

Respondents also argue (at 19) that no case says personal jurisdiction is a claim-specific analysis. Actually, plenty of cases say that. *International Shoe* itself held that plaintiffs may not "su[e] on *causes of action* unconnected with [a defendant's] activities" in the forum. 326 U.S. at 317 (emphasis added); *see id.* at 318 (similar). Subsequent opinions have reiterated that the specific-jurisdiction inquiry requires courts to examine "the particular cause of action" at issue, *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980); to find a "relationship between the cause of action and [the defendant's] contacts," *Helicopteros*, 466 U.S. at 415 n.10; and to adjudicate only those "cause[s] of action arising out of the corporation's activities within the state of the forum," *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 444-445 (1952); *see also Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) (similar); *Kulko* v. *Superior Court*, 436 U.S. 84, 97 (1978) (similar); *Shaffer* v. *Heitner*, 433 U.S. 186, 209 (1977) (similar); *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958) (similar). Indeed, every court of appeals to consider the issue has agreed that "specific personal jurisdiction must independently exist for each claim and the existence of personal jurisdiction for one claim will not provide the basis for another claim." 5B Charles Alan Wright et al., *Federal Practice & Procedure* § 1351

n.30 (3d ed. Apr. 2017 update), *quoted in Seiferth* v. *Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 n.6 (5th Cir. 2006); *see, e.g.*, *Picot* v. *Weston*, 780 F.3d 1206, 1215 n.3 (9th Cir. 2015); *Sunward Elecs., Inc.* v. *McDonald*, 362 F.3d 17, 24 (2d Cir. 2004).

Respondents thus err in asserting that a connection between the defendant and any part of the "litigation" suffices. The Court has made clear that a contact "completely unrelated to the plaintiff's cause of action" fails to establish the requisite "ties among the defendant, the State, and the litigation." *Shaffer*, 433 U.S. at 208-209. *Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102 (1987), proves the point: There, the Court considered whether California had jurisdiction to "adjudicat[e] [a] Taiwanese company's *cross-complaint*" for indemnification, even though the State's jurisdiction over the underlying cause of action was undisputed. *Goodyear*, 564 U.S. at 925 (emphasis added); *see Asahi*, 480 U.S. at 114.

2. Respondents contend that *Keeton* refutes these principles. It does not. In that case, Keeton brought a libel claim in New Hampshire against a defendant who distributed thousands of copies of an allegedly libelous magazine in the forum and other States. 465 U.S. at 772. The Court found that "all the requisites for personal jurisdiction" were "unquestionabl[y]" satisfied in light of a causal link between the defendant's forum contacts and Keeton's claim: The defendant had engaged in "regular circulation of magazines in the forum State," and Keeton's "libel action [was] based on the contents of the magazine." *Id.* at 773-774.

The only question before the Court was whether Keeton's suit was nevertheless so "unfair" as to

"defeat jurisdiction otherwise proper." *Id.* at 773, 775. The Court said no. Because New Hampshire had jurisdiction over Keeton's cause of action, it could award her all of the "damages" that its substantive law authorized. *Id.* at 773-774. And New Hampshire law, like the law of most other States, authorized plaintiffs to bring "only one action" for a libel reprinted in multiple copies of a single publication, and to recover "all damages suffered in all jurisdictions * * * in the one action." *Id.* at 773 n.2, 777 n.8. Because that "single publication rule" was both efficient and known to anyone conducting business in the forum, the Court held there was "no unfairness" in applying it to the defendant. *Id.* at 777-778, 781.

Keeton thus stands for two propositions, neither helpful to respondents. *First*, a court may exercise jurisdiction "when the [plaintiff's] cause of action arises out of * * * activity being conducted, in part, in [the forum]." *Id.* at 780. *Second*, once jurisdiction over the cause of action has been established, a plaintiff may seek the full "damages" authorized by the State's substantive law, even if those damages are calculated in part by looking to the defendant's out-of-state conduct. *Id.* at 778 n.9, 781. Contrary to respondents' repeated mischaracterization (at 24-26, 48-49, 61), the Court did not permit New Hampshire to exercise specific jurisdiction over multiple "claims" or to enforce multiple "obligations," only some of which were causally linked to the State. It allowed *one* plaintiff to bring *one* claim arising out of the forum, and to seek full damages for that claim permitted by substantive law. The Court did not authorize a State to assert jurisdiction over *different*

plaintiffs asserting *different* claims lacking *any* causal link to the forum.

3. Respondents (at 27) also rely on *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), but that decision is even farther afield. As respondents ultimately acknowledge (at 28 n.6), *Shutts* concerned whether "specific jurisdiction was fairly asserted over the non-resident *plaintiffs*" in a nationwide class action. (Emphasis added.) At issue was the connection between the absent plaintiffs and the forum—not the connection between the defendant's forum contacts and the litigation. *See* 472 U.S. at 806. So *Shutts* says nothing about the question presented here.

Respondents nevertheless insist (at 28 n.6) that the state court's exercise of jurisdiction in *Shutts* would have been proper even if the defendant had "invoked its *own* due-process rights, rather than those of the non-resident plaintiffs."[1] But the entire point of *Shutts* was that the due-process analysis is different depending on whether the plaintiff's or defendant's rights are at issue. *See* 472 U.S. at 806-812.

4. Unable to find support in any of this Court's precedents, respondents candidly identify their real problem as *International Shoe* itself. Respondents thus urge the Court to revert to the regime set forth

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[1] The defendant in *Shutts* presumably did not invoke its own due-process rights because of Kansas's pre-*Daimler* "doing business" standard for *general* jurisdiction. *See Shutts* v. *Phillips Petroleum Co.*, 567 P.2d 1292, 1304 (Kan. 1977) (holding, in an earlier class action, that the same defendant "does business in Kansas," and noting that "the jurisdiction of the trial court over the defendant" was undisputed).

in *Pennoyer* v. *Neff*, 95 U.S. 714 (1877)—and to "overrule *International Shoe* and its progeny" to the extent they stand in the way. Resp. Br. 33-36 & n.7.

The Court should decline. Opinion after opinion has adhered to *International Shoe*'s framework without a word of dissent. *See, e.g.*, *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014); *Daimler*, 134 S. Ct. at 753-754; *Shaffer*, 433 U.S. at 196-206. And as Justice Scalia has explained, the "rigid [territorial] requirement[s]" of *Pennoyer* were based on "purely fictional" notions of "consent and presence." *Burnham* v. *Superior Court*, 495 U.S. 604, 617-618 (1990) (plurality opinion). *International Shoe* "cast those fictions aside and made explicit the *underlying basis* of th[o]se decisions." *Id.* at 618 (emphasis added). Reviving *Pennoyer*'s imperfect fictions would do nothing to respect the foundations of the Court's due-process jurisprudence.

B. The Structure And Purposes Of The Specific-Jurisdiction Inquiry Require A Causal Test

Respondents barely contest the remaining rationales supporting a causal test: harmonizing the different parts of the specific-jurisdiction analysis and advancing the principles of federalism, predictability, and fairness.

1. *Structure.* Respondents do not dispute that the *first* link in the specific-jurisdiction inquiry—between the defendant and the forum—requires a causal relationship. Pet. Br. 23, 40-41. They offer no reason why a lesser connection is sufficient to establish the *second* link—between the forum and the plaintiff's cause of action. A non-causal test for the second link would allow the plaintiff to hale a de-

fendant into court based on "random, fortuitous, or attenuated" connections between the forum and the plaintiff's claims—such as a plaintiff's "unilateral activity" in choosing to sue alongside another plaintiff whose claim *is* causally linked to the defendant's forum contacts. *Walden*, 134 S. Ct. at 1123 (internal quotation marks omitted). The Court has repeatedly held that such randomness should not infect the purposeful-availment inquiry, and the arise-out-of-or-relate-to analysis should be subject to the same standard.

2. *Federalism.* Respondents do not dispute that the obligations Bristol-Myers allegedly owes them were incurred outside California. They simply say (at 22) that personal jurisdiction does not necessarily give a State authority to apply its own substantive laws. But if that were truly dispositive, there would be no principle of reciprocity animating this Court's specific-jurisdiction decisions. Pet. Br. 25-27; *see World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980) (describing the Due Process Clause "as an instrument of interstate federalism" in the personal-jurisdiction context). Respondents also overlook that California would have to apply 33 other States' unfamiliar law—a situation less than ideal. GlaxoSmithKline Br. 20-22.

In addition, respondents ignore that the "power * * * to resolve disputes" is "no less" a component of sovereign authority than "the power * * * to prescribe rules of conduct." *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion). Indeed, a forum with adjudicatory authority applies its own *procedural* rules to the dispute. *See Sun Oil Co.* v. *Wortman*, 486 U.S. 717, 723, 729-730 (1988).

And procedure often makes a substantive difference. *See* Pet. Br. 29-30; DRI Br. 12-15. As the Court has recognized in other contexts, considerations of "federalism and comity" demand respect for the "procedural rules" of the appropriate forum. *Beard* v. *Kindler*, 558 U.S. 53, 62 (2009); *see Coleman* v. *Thompson*, 501 U.S. 722, 726, 750 (1991). Here, an appropriate forum is a place where some conduct giving rise to respondents' claims occurred; California cannot "tread on the domain" of its "sister State[s]" by seizing authority to decide respondents' claims itself. *Nicastro*, 564 U.S. at 899 (Ginsburg, J., dissenting).

3. *Predictability.* Respondents suggest (at 22-23, 62) that it is enough that defendants can predict that they will be subject to *some* litigation in each forum where they have contacts. But to receive the "fair warning" to which due process entitles them, potential defendants need to know the *extent* of their exposure in a forum, *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985), so that they can procure appropriate "insurance," set "costs" for their products, and manage the extent of their "connection with [a] State." *World-Wide Volkswagen*, 444 U.S. at 297. Only a causal test provides defendants this fair notice. *See* Pet. Br. 27-30; Chamber Br. 20-23; PhRMA Br. 25; PLAC Br. 11-12. Absent a causal requirement, a defendant selling a product nationally can only guess where it will be sued for any particular conduct; if sales to others in a forum are "related" forum contacts, each allegedly injured person could sue anywhere. U.S. Br. 32-33.

4. *Fairness.* Finally, requiring a defendant to litigate far from where the underlying acts took place

makes it more difficult for the defendant to gather relevant evidence, subpoena necessary witnesses, and mount a convincing defense. Pet. Br. 30-31. Respondents do not acknowledge any of these costs; nor do they identify any legitimate interests of States or plaintiffs in adjudicating suits where none of the conduct underlying the claim occurred. Respondents' assumption (at 23, 52-53) that so long as a defendant is litigating one claim in a forum, it is fair to make it litigate all of them there is not due process in any sense.[2]

II. RESPONDENTS' NON-CAUSAL TEST IS NOT SUPPORTED BY THIS COURT'S CASES OR COMMON SENSE

Respondents' brief, surprisingly, jettisons any defense of the California Supreme Court's sliding-scale test and instead offers an even broader non-causal test that respondents made up themselves. Respondents do not suggest that any court has ever described, endorsed, or applied their test. Unlike California's test, theirs does not depend at all on the intensity of the defendant's contacts with the forum. *See* Resp. Br. 14-15 (California's test "is not exactly right"). Instead, respondents apparently believe that, regardless of the intensity of a defendant's contacts with the forum, a plaintiff can always satisfy the arise-out-of-or-relate-to requirement if the

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[2] Respondents (at 8) take out of context Bristol-Myers's counsel's statement below that some plaintiffs' cases would not be filed if jurisdiction were defeated. In context, counsel was saying that if plaintiffs' attorneys were not able to bring claims unconnected to California in the State, those claims would not be filed "in mass numbers to get leverage for some sort of future settlement." Cal. Ct. App. Oral Arg. Recording at 23:30.

conduct that allegedly harmed the plaintiff is similar to *other* conduct by the defendant there. Given that most States interpret their long-arm statutes as coextensive with due process, *see Nicastro*, 564 U.S. at 903 n.8 (Ginsburg, J., dissenting), respondents' test would give courts across the country sweeping jurisdictional reach. Respondents' test, however, is unmoored from this Court's cases and common sense.

1. Respondents identify three circumstances that they assert can justify specific jurisdiction when there is no causal link between the defendant's in-forum activities and a plaintiff's cause of action: (1) some other plaintiff in the case is asserting a claim that is causally linked to the defendant's forum contacts; (2) some other defendant in the case is subject to personal jurisdiction in the forum; and (3) the plaintiff's claims are based on conduct similar to conduct that the defendant directed at the forum. Resp. Br. 2-3. None of these factors, alone or in combination—and respondents never quite settle on whether their rule requires some or all of them, *compare, e.g.*, *id.* at 17-18, *with id.* at 61-62—are constitutionally sufficient for a forum to hale a defendant into court to answer claims not causally linked to the defendant's forum contacts. Just the contrary: Each of respondents' supposedly limiting principles is contrary to case law and the principles of specific jurisdiction.

a. Any reliance on the presence of co-plaintiffs runs headlong into *Walden*. *Id.* at 22-23. There, the Court held that a plaintiff's unilateral decisions do not inform whether specific jurisdiction over a defendant comports with due process. 134 S. Ct. at 1123. The plaintiffs named in a complaint is just

such a unilateral decision; a defendant has no control over it. Pet. Br. 49-50. And it makes no sense that two people, prescribed Plavix in two different States, can subject a defendant to specific jurisdiction in either State if they sue together, but not if they sue separately. *See Walden*, 134 S. Ct. at 1122 ("it is the defendant's conduct that must form the necessary connection").

At points, respondents (at 21, 62) go even further, suggesting that there need only be a *hypothetical* co-plaintiff with causally linked claims. If that were correct, a single forum contact could result in an unlimited number of claims in that forum: By selling a single Plavix pill in Nebraska, for example, every plaintiff in the country asserting claims about Plavix could sue Bristol-Myers in Nebraska. That result—which not even the California Supreme Court endorsed, *see* Pet. App. 32a-33a—would essentially turn *every* State into Bristol-Myers's "home" for Plavix claims, "elid[ing] the essential difference between case-specific and all-purpose (general) jurisdiction." *Goodyear*, 564 U.S. at 924, 927.

Respondents' contention (at 23) that such a rule brings predictability blinks reality. Respondents' test allows any Plavix plaintiff to sue anywhere Plavix is distributed. Bristol-Myers has no way to predict whether Plavix claims will be aggregated into litigation in a few forums, or whether patients prescribed Plavix in West Virginia will sue in Texas, those in Texas will sue in Ohio, and so on. For corporations like Bristol-Myers, "act[ing] to alleviate the risk of burdensome litigation by procuring insurance [or] passing the expected costs on to customers," *World-Wide Volkswagen*, 444 U.S. at 297, it matters

whether individual plaintiffs from around the country can flock to States with plaintiff-friendly procedural rules or historically generous juries. *See* Pet. Br. 4; GlaxoSmithKline Br. 7-14. Moreover, because there is no obligation to file in any particular jurisdiction under respondents' rule, the supposed streamlining benefits are illusory. U.S. Br. 32-33. Defendants would have no way to anticipate the extent of liability in any given forum, diminishing the predictability that is so "valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010).[3]

b. Respondents' next suggestion—that personal jurisdiction over one co-defendant makes jurisdiction over another co-defendant proper—is equally wrong. Respondents (at 2, 5, 39-40, 50) repeatedly cite McKesson's role to justify specific jurisdiction over Bristol-Myers. But *Rush* held that a court cannot lump "the 'defending parties' together and aggregat[e] their forum contacts in determining whether it ha[s] jurisdiction." 444 U.S. at 331. Personal jurisdiction "must be met as to each defendant." *Id.* at 332.

Respondents reply that, under *Rush*, "the parties' relationships with each other may be significant in evaluating their ties to the forum." Resp. Br. 50 (quoting *Rush*, 444 U.S. at 332). But all that means is that the defendants' contacts with each other may, in some cases, be forum contacts. *See Walden*, 134

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[3] It does not matter how long California has followed a non-causal rule. *Contra* Resp. Br. 39. No defendant should be expected to predict that a State will exercise jurisdiction beyond federal constitutional limits.

S. Ct. at 1123. Here, however, even if Bristol-Myers's relationship with McKesson is a California contact, it has no relevance to *respondents'* claims. Respondents conceded below that there is no evidence that they received Plavix distributed by McKesson from California. *See* Pet. App. 59a-60a (Werdegar, J., dissenting).

c. That leaves respondents' reliance on Bristol-Myers's allegedly similar Plavix sales and marketing practices. Resp. Br. 1, 2, 4, 47, 52, 56, 64. But respondents never say why it is fair, predictable, or consistent with federalism that California can make itself the arbiter of such practices in 49 other States. They also offer no explanation for how courts should ascertain whether marketing practices are sufficiently similar to overcome the lack of a causal link—does it depend on identical ad copy in each State, identical marketing channels, scripted sales pitches, or something else entirely?

And that is just the tip of the iceberg. Respondents maintain (at 23) that under their test, the "required 'connection' * * * exists only where the claims of the non-forum residents track those of the residents on both the operative facts and relevant law." But it is not even clear that respondents' own claims satisfy that test. Though their complaints are "materially identical" on their face, Pet. Br. 4 n.1, a host of individualized issues lurk underneath the surface, with respect to both the facts (like whether their alleged injuries actually resulted from taking Plavix) and the law (like which State's legal standards apply and what those standards entail). *Id.* at 5.

Respondents hint (at 52) that they are proposing a similarity standard akin to class certification. But if

that is the case, then what respondents are offering is a "[c]omplex jurisdictional test[]" that will "eat[] up time and money as parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz*, 559 U.S. at 94. And trial courts will be forced to confront intensely factual questions at the threshold of a case, undermining "the efficient disposition of an issue that should be resolved expeditiously." *Daimler*, 134 S. Ct. at 762 n.20.

2. Neither of the backstops that respondents offer makes their test any more palatable.

First, respondents invoke—eight times—a separate reasonableness inquiry to avoid the problems their test creates. Resp. Br. 20, 22, 36, 37, 49 n.11, 54-55, 61-62, 63. But this Court has never treated that inquiry as a "core aspect" of the personal-jurisdiction analysis. *Id.* at 14. Rather, the Court has explained that it is the purposeful-availment and arise-out-of-or-relate-to requirements that "give specific content to the 'fair play and substantial justice' concept." *Goodyear*, 564 U.S. at 923. When those two requirements are met, a separate reasonableness inquiry operates merely as a safety valve to allow a defendant to argue that "the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477; *see also Daimler*, 134 S. Ct. at 762 n.20. As a result, only in "rare cases" do "minimum requirements inherent in the concept of 'fair play and substantial justice' . . . defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities." *Asahi*, 480 U.S. at 116 (Brennan, J., concurring in part and in the judgment) (brackets

in original) (some internal quotation marks omitted); *see also* 4 Wright et al., *supra*, § 1067.2 (4th ed. Apr. 2017 update) (even with the reasonableness safety valve, "the existence of minimum contacts still constitutes the central query"). Indeed, *Asahi* is the *only* case in which the Court has found jurisdiction unreasonable in the face of a causal link between the defendant, the forum, and the cause of action. 480 U.S. at 113-116.[4]

That respondents must repeatedly invoke a stand-alone reasonableness inquiry to make their non-causal test workable proves just how unsound their test is. The Court has invested so heavily in articulating the purposeful-availment and arise-out-of-or-relate-to requirements because those requirements are meant to be the end of the inquiry in all but outlier situations. Placing the weight respondents do on a free-floating totality-of-the-circumstances reasonableness assessment would undermine predictability and fairness for defendants. *See Vieth* v. *Jubelirer*, 541 U.S. 267, 291 (2004) (plurality opinion) ("'Fairness' does not seem to us a judicially manageable standard.").

Second, respondents (at 37) point to *forum non conveniens* principles as another "tool[]" to "alleviate possible unfairness." But *forum non conveniens* does not "implicate[] constitutional due process rights,"

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[4] In the California Supreme Court, Bristol-Myers declined to argue that this was an extraordinary case requiring a *separate* reasonableness inquiry, but that was only because the lack of the required connection between its California contacts and respondents' claims was enough to render jurisdiction contrary to due process. *See* Pet. App. 35a-36a; Cert Reply Br. 12-13.

Islamic Republic of Iran v. *Pahlavi*, 467 N.E.2d 245, 250 (N.Y. 1984), so there is no constitutional requirement that state courts adhere to traditional *forum non conveniens* doctrines or any *forum non conveniens* doctrine at all. *See Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140, 145 (1988).

In the end, respondents appear (at 15-17) to view *Daimler*'s statement that specific jurisdiction has "flourished" since *International Shoe* as a way to smuggle in old general-jurisdiction results under a new specific-jurisdiction label. But the Court warned over 50 years ago that the "flexible standard" of *International Shoe* does not "herald[] the eventual demise of all restrictions on the personal jurisdiction of state courts." *Hanson*, 357 U.S. at 251. Respondents' unsupported test bends *International Shoe* beyond its breaking point.

III. A CAUSAL TEST WOULD NOT UPEND SETTLED JUDICIAL PRACTICES

Respondents foresee a parade of horribles that would follow a holding that specific jurisdiction requires a causal connection. This Court has rejected similar doomsaying before. *See Walden*, 134 S. Ct. at 1125 n.9. Here, at least eight federal courts of appeals covering 37 States, as well as the majority of state high courts to have addressed the issue, already require a causal connection. *See* Pet. 10-15. And those jurisdictions have escaped respondents' apocalypse. That alone refutes respondents' contention (at 15) that a causal test would upend "settled practices." In any event, respondents' fears are unfounded.

1. Respondents first warn (at 29-30) that a causal requirement would prevent a plaintiff from bringing

multiple "claims" against a defendant in any jurisdiction except the defendant's home. Respondents offer the example of a Nevada company whose "manufacturing negligence" in Nevada causes it to fail to deliver goods to another company in Nevada and California. According to respondents, a causal requirement would prevent the injured company from bringing a single suit in California.

Not true. Respondents' hypothetical does not involve multiple "claims" at all. Rather, it involves a single cause of action for "negligence." That cause of action arises (in part) out of the defendant's contacts with California (where the defendant failed to deliver goods), so the California court may exercise specific jurisdiction over the cause of action. Whether the California court may award damages for harms suffered in both Nevada and California is "a matter of substantive law, not personal jurisdiction"—just as in *Keeton*. 465 U.S. at 778 n.9; *Restatement (Second) of Torts* § 910 (1979) ("One injured by the tort of another is entitled to recover damages from the other for all harm * * * legally caused by the tort.").

A causal requirement thus limits where a cause of action may be heard, but it does not limit what remedies may be recovered. Whether the plaintiff's cause of action is for libel, negligence, copyright infringement, or something else, the principle is the same: So long as the cause of action arises (even in part) out of the defendant's forum contacts, the causal requirement is satisfied. *See Keeton*, 465 U.S. at 780. And once specific jurisdiction over the defendant on the cause of action is established, the

forum may award whatever remedies the applicable substantive law permits. *See id.* at 778 n.9.

2. Respondents next contend that a causal requirement would essentially make it "impossible" for a plaintiff to bring a single suit against "multiple defendants that do not share a home forum." Resp. Br. 39. But if "multiple defendants" have in fact engaged in "identical wrongful conduct," *id.*, there will be plenty of jurisdictions where they can be sued together under a causal test—such as where they jointly distributed or jointly marketed a product. Even under respondents' test, the requirements of specific jurisdiction would still have to "be met as to each defendant." *Rush*, 444 U.S. at 332. And the fact that multiple defendants were involved in the "same controversy," Resp. Br. 40, cannot overcome that rule. If respondents believe it should be easier to sue multiple defendants together, their real quarrel is with *Rush*—not any causal requirement.

3. Respondents also warn (at 40-41) that a causal requirement could jeopardize a state court's authority "to probate an estate by resolving all claims against it." Probate, however, is a proceeding *in rem*, *In re Estate of Zagaria*, 997 N.E.2d 913, 919 (Ill. App. Ct. 2013), based not on the court's "authority over the defendant's person," but rather on its "power over property within its territory," *Shaffer*, 433 U.S. at 199. And though the "minimum-contacts standard" applies to *in rem* and *in personam* proceedings alike, this Court has said that "when claims to the property itself are the source of the underlying controversy * * *, it would be unusual for the State where the property is located not to have jurisdiction." *Id.* at 207. That is, it would be unusual for

such a claim not to arise out of the property within the State.[5]

4. Respondents further argue that a causal requirement would be inconsistent with various aspects of federal litigation. That is incorrect.

According to respondents (at 44), a causal requirement would invalidate federal provisions authorizing "nationwide [personal] jurisdiction" in federal courts. But those provisions rest on the understanding that, under the Fifth Amendment, a federal court may exercise personal jurisdiction "based on an aggregation of the defendant's contacts with the Nation as a whole, rather than on its contacts with the State in which the federal court sits." *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987). The Court here need not decide whether that is correct. *See* Pet. Br. 17 n.4; U.S. Br. 31 n.4. But if it is, a plaintiff's claim would merely have to arise out of a defendant's contacts anywhere in the United States—a requirement often satisfied.

Respondents also suggest (at 43) that a causal requirement "would render unconstitutional federal multi-state class actions and the entire federal multidistrict litigation scheme." But again, the constitutionality of those schemes is a Fifth Amendment question, not presented here. *See In re "Agent*

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[5] Many family-law cases, like marriage-dissolution actions and child-custody disputes, are adjudications of status, which courts have understood to be excepted from the minimum-contacts standard under *Shaffer*, 433 U.S. at 208 n.30. *See, e.g.*, *Henderson* v. *Henderson*, 818 A.2d 669, 674 & n.4 (R.I. 2003) (per curiam); *Balestrieri* v. *Maliska*, 622 So.2d 561, 563 (Fla. Dist. Ct. App. 1993).

Orange" Prod. Liab. Litig., 818 F.2d 145, 163 (2d Cir. 1987).

With respect to class actions, moreover, this Court has not decided whether the specific-jurisdiction analysis should consider the claims of all class members or just those of named class representatives. *See* U.S. Br. 32 n.5; *Devlin* v. *Scardelletti*, 536 U.S. 1, 9-14 (2002) (explaining that unnamed class members "may be parties for some purposes and not for others"). And even if unnamed class members were treated as parties for the specific-jurisdiction analysis, a class action could always be brought in the State where the defendant is at home or in the State where the defendant undertook conduct giving rise to the plaintiff's claims.

Respondents' concerns about the federal MDL statute are similarly off-base. Respondents (at 43) appear to think that the "MDL court"—the *transferee* forum—must have a "causative connection" to the plaintiffs' claims. But in an MDL proceeding, it is the personal jurisdiction of the *transferor* court that matters. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 583 n.8 (5th Cir. 2014).

Respondents (at 45) also point to "circumstances in which federal courts extend their adjudicatory power over claims they could not independently reach" by exercising supplemental jurisdiction, pendent-party jurisdiction, or minimal-diversity jurisdiction. But those doctrines expand a federal court's *subject-matter* jurisdiction within the limits of *Article III*. None has anything to do with a state court's exercise of personal jurisdiction under the Fourteenth Amendment. Even respondents' reliance (at 31, 46)

on the doctrine of "pendent personal jurisdiction" is misplaced. That is a doctrine of "federal common law," which allows a federal court to exercise personal jurisdiction beyond that permitted by Federal Rule of Civil Procedure 4(k)(1)(A) but still within the limits of the Fifth Amendment. 4A Wright et al., *supra*, § 1069.7 (4th ed. Apr. 2017 update). The doctrine has no application in state courts, and it is no exception to the rule that *each* cause of action must satisfy the constitutional requirements of personal jurisdiction.

5. Finally, respondents contend (at 31-32) that excluding certain plaintiffs from the specific jurisdiction of a particular court will lead to "wasteful" fights about the collateral-estoppel effect of "favorable" judgments. But no rule—not even respondents'—can guarantee that all possible plaintiffs will sue together in a single suit. This case proves the point: Notwithstanding California's non-causal standard, Bristol-Myers was sued—often by respondents' same counsel—not just in California but also in New York, New Jersey, Delaware, and Illinois. *See* Pet. Br. 50-51; *In re Plavix Mktg., Sales Practices & Prods. Liab. Litig.*, 923 F. Supp. 2d 1376, 1378 (J.P.M.L. 2013); Joint Case Management Conference Statement 1, *Plavix Prod. & Mktg. Cases*, JCCP No. 4748 (Cal. Super. Ct. June 1, 2016). Respondents' rule would thus do nothing to prevent the invocation of collateral estoppel in different suits.

In any event, it is far from clear that collateral estoppel has much relevance to products-liability suits. *See Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 326, 331-332 (1979) (doctrine applies only when there are "identical" issues and no "inconsistent"

judgments); *Coburn* v. *SmithKline Beecham Corp.*, 174 F. Supp. 2d 1235, 1237-1241 (D. Utah 2001) (declining to apply doctrine in products-liability case); Alison Kennamer, *Issues Raised by the Potential Application of Non-Mutual Offensive Collateral Estoppel in Texas Products Liability Cases*, 30 Tex. Tech L. Rev. 1127, 1155 (1999) ("the vast majority of courts that have considered the issue of non-mutual offensive collateral estoppel in the context of products liability litigation have chosen not to apply the doctrine"). And to the extent a defendant finds having to litigate in multiple jurisdictions unfair, it could simply consent to a single forum's exercise of personal jurisdiction.

CONCLUSION

The judgment of the California Supreme Court should be reversed.

Respectfully submitted,

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